

SERVED: December 21, 1998

NTSB Order No. EA-4732

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of December, 1998

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14987
v.)	
)	
WILBUR W. EASTON,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered after an evidentiary hearing held on October 16, 1997.¹ By that decision, the law judge affirmed an order of the Administrator alleging that respondent had violated sections 91.405(b), 91.407(a), 91.7(a), and 91.13(a) of the Federal Aviation Regulations

¹An excerpt from the hearing transcript containing the initial decision is attached.

("FAR's"),² but reduced the 60-day suspension sought by the Administrator of any airman certificate held by the respondent, including his commercial pilot certificate, to a 45-day suspension.³ We deny the appeal.

The Administrator's July 18, 1997 order of suspension, which served as the complaint in this proceeding, reads, in pertinent part, as follows:

1. You are now, and at all times mentioned herein were,

²FAR sections 91.7(a), 91.13(a), 91.405(b), and 91.407(a) provide, in relevant part:

§ 91.7 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in airworthy condition.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

§ 91.405 Maintenance required.

Each owner or operator of an aircraft—

(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service.

§ 91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless—

(1) It has been approved for return to service by a person authorized under §43.7 of this chapter; and

(2) The maintenance record entry required by §43.9 or §43.11, as applicable, of this chapter has been made.

³The law judge found that respondent's actions were careless, but not reckless.

the holder of Commercial Pilot Certificate No. 562863272.

2. On or about November 2, 1996, you acted as Pilot-in-Command, of civil aircraft N309FS, a Cessna 310J, on a passenger carrying flight from Pueblo Airport, Pueblo, Colorado to Centennial Airport, Englewood, Colorado.
3. The flight described above ended in a landing with the nose gear only partially extended sustaining substantial damage to the aircraft.
4. Prior to this flight, maintenance was performed on the nose section of N309FS.
5. Subsequent to the maintenance described above, there were no entries made in the aircraft maintenance records as required by FAR Section 43.9 or 43.11 regarding such maintenance and you did nothing to ensure such entry was made.
6. Subsequent to the maintenance described above, the aircraft was not returned to service by an authorized person, no entries were made in the maintenance log indicating a return to service and you did nothing to ensure that such entries were made.
7. During the flight described in paragraph 2 above, the nose gear doors were not connected to the linkage rods and the heater was in an inoperative condition.
8. During this flight, due to the discrepancies described above, you operated N309FS while it was not in airworthy condition.
9. Your actions as described above were careless or reckless so as to endanger the lives or property of others.

The law judge found that the evidence established these allegations.

Upon consideration of the briefs of the parties and the record below, we find that safety in air commerce or air

transportation and the public interest require affirmation of the charges in the Administrator's complaint and the initial decision.

Briefly, the facts are as follows: Prior to November 2, 1996, the respondent took his Cessna 310J (N309FS) to Peak Aviation (Peak) in Pueblo, Colorado, to have the cabin heater inspected for compliance with an airworthiness directive. Lance Ricord, an aviation mechanic employed by Peak, began work on the cabin heater, accessing it through the nose gear compartment. Due to the small space, it was also necessary to disconnect the linkage rods that operate the gear doors. Mr. Ricord had begun reinstalling the heater when the respondent telephoned Peak and indicated he wanted to fly his airplane that day. When the respondent arrived at Peak, the aircraft was not ready, as Mr. Ricord was in the front gear compartment, troubleshooting the heater. The respondent nevertheless commenced his preflight, noting the disconnected nose gear door linkage rods, about which he questioned Mr. Ricord. Mr. Ricord was still working on the heater when the respondent completed his preflight and returned to the lobby of Peak.

Mr. Ricord continued working on N309FS for approximately 20 minutes and was unable to fix the heater. He informed the respondent that the aircraft was "good to go" but that the heater was inoperative. The respondent then went to his aircraft with his passenger and began his flight. He did not re-check the linkage rods or examine the maintenance that had been performed.

As a result, he did not discover that the gear door linkage rods were still disconnected, a circumstance that, during the flight, caused the gear doors to be sucked into the gear well, preventing the front nose gear from deploying. The respondent was forced to land with the front gear in the retracted position, and the aircraft sustained damage upon landing.

With regard to the alleged violations of FAR sections 91.405 and 91.407, respondent does not dispute that no entries, either describing the work done on the aircraft or returning it to service, were made in the aircraft's maintenance records. He nevertheless maintains that his responsibility under the regulations should be deemed to have been satisfied because of the mechanic's advice, delivered personally and through the FBO owner, that the aircraft was "ready" for respondent to use. We do not agree that respondent could assume from such advice that all paperwork relative to the maintenance work on his aircraft had been completed, such that *his* responsibility to verify that it had been before operating the aircraft could reasonably be said to have been discharged.⁴ Since we find no error in the law judge's conclusion that relying on the mechanic's statement that the aircraft could be operated was not enough, it is not

⁴We ruled in Administrator v. Haney, NTSB Order No. EA-3832 at 3 (1993), that the fact maintenance personnel also failed in their duties illustrates the importance of respondent's function; it does not excuse his conduct. Consistent with that precedent, the law judge in this case stated the mechanic's failure to take care of the paperwork did not absolve the respondent, because he had an independent duty under the regulations to see that the entries had been made.

necessary in this case to determine what respondent needed to do short of personally inspecting the aircraft's records in order to "ensure" that the required entries had been made.⁵

Respondent does not dispute that the disconnected nose gear doors rendered the aircraft unairworthy.⁶ Moreover, he admits he did not re-inspect the nose gear doors after his preliminary preflight, conducted while the mechanic was working in the nose gear well, and that he knew that the heater was inoperative and that the linkage rods were disconnected at the time of his preflight. Respondent maintains, nevertheless, that he should not be held to have operated, in a manner that carelessly endangered the life or property of another, an unairworthy aircraft because, in his view, the mechanic's statement that the aircraft was "good to go" established that the plane was airworthy and eliminated any need for any additional examination of it by respondent. Once again, we disagree.

One need look no further than the facts of this case to understand the risks that attend a pilot's failure to confirm an

⁵Respondent's argument that the law judge applied a strict liability standard borders on the frivolous, in the context of a case in which he neither asked to review the aircraft records nor inquired of the mechanic or FBO as to whether the required entries in the records had been made. We also find no merit in respondent's argument that charging violations of both § 91.405(b) and § 91.407(a) was a capricious compounding of the charges. The two charges deal with separate and distinct responsibilities, albeit for the same deficiency. In any event, the law judge reduced the sanction from 60 days to 45 days because these charges related to the same incident.

⁶He does, however, contest the adequacy of the evidence underlying the law judge's conclusion that the aircraft was unairworthy because of the inoperative heater. We find no

aircraft's airworthiness following maintenance.⁷ We fully appreciate that a pilot may well lack the mechanical expertise to enable him to recognize every condition that might affect the airworthiness of an aircraft. At the same time, the requirement that a pilot preflight an aircraft presupposes the ability of non-mechanics to spot conditions that may bear on an aircraft's capacity for safe flight, as well as its conformity to original design, and the obligation to preflight an aircraft is not erased by the recency of maintenance.

This case does not, after all, involve some hidden mechanical defect of which respondent was unaware or which would not have been evident upon the most casual inspection; it involves an area of respondent's aircraft which he knew had been partially disassembled and which he could easily have checked before commencing his flight. It seems to us that, wholly apart

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shortcoming in the proof on this matter.

⁷For the most part, the case law cited by respondent in support of his argument that he reasonably relied on the mechanic refers to reliance on another crewmember, such as a co-pilot. In this case, respondent was the pilot-in-command of N309FS and had no other crewmembers. In Administrator v. Fay & Takacs, NTSB Order No. EA-3501 at 9 (1992), we summarized precedent dealing with reasonable reliance, noting that:

As a general rule, the pilot-in-command is responsible for the overall safe operation of the aircraft. If, however, a particular task is the responsibility of another, if the PIC has no independent obligation (e.g., based on operating procedures or manuals) or ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found.

This line of cases does not help respondent since, among other things, it was *his* responsibility to ensure that maintenance records were completed by the mechanic and *his* responsibility to

from whatever independent duty respondent may have had to double check the mechanic's work once he indicated that he was through, the respondent was obligated to look at the nose gear doors a second time in order to finish the preflight inspection of that area he had started earlier, for that preflight cannot be said to have been adequately performed unless respondent later personally determined that the deficiency he had observed (namely, the disconnected gear door rods) had in fact been corrected. We entertain no doubt that a reasonable and prudent pilot would do no less.⁸ For these reasons, we reject respondent's contention that he should not be held responsible for having flown an unairworthy aircraft.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The Administrator's order, as modified by the initial decision, and the initial decision are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)
give the aircraft a proper preflight.

⁸We also entertain no doubt that a failure to perform a proper preflight inspection, evidenced here by respondent's neglect in not rechecking the nose gear doors, is an unsafe practice amply supportive of the FAR section 91.13(a) charge.